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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,299	04/20/2004	Robert C. Holcomb	18176.01	2572
37833 7590 05/14/2007 LITMAN LAW OFFICES, LTD. P.O. BOX 15035 CRYSTAL CITY STATION ARLINGTON, VA 22215			EXAMINER PATTERSON, MARIE D	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 05/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/827,299

Applicant(s)

HOLCOMB, ROBERT C.

Examiner

Marie Patterson

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3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-18 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-18 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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**1. Claim Rejections - 35 USC § 103**

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 4, 6, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bible (4779360) in view of Watanabe (5603367).

Bible shows a shoe comprising a rubber elastic upper (14), and a rubber sole (22) with traction material (30) embedded therein substantially as claimed except for the exact traction material. Watanabe teaches the use of sand (7) as a traction material for embedding into rubber material for traction. It would have been obvious to use crushed nuts as taught by Watanabe for the traction material in the shoe of Bible to increase traction on wet surfaces, and improve durability.

In reference to claims 3, 4, and 6, Bible as modified above shows a shoe except for the exact rubber for the sole. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use latex rubber, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bible as applied to claims 1, 3, 4, 6, 11, and 12 above, and further in view of Simonson (1999214).

Bible shows a shoe substantially as claimed except for lateral chain segments. Simonson teaches providing lateral chain segments (4) in a sole to increase traction. It would have been obvious to provide lateral chain segments as taught by Simonson in the shoe of Bible to increase traction.

5. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bible as applied to claims 1, 3, 4, 6, 11, and 12 above, and further in view of Massengale.

Bible as modified above shows a shoe substantially as claimed except for the exact upper configuration. Massengale teaches the well known closure arrangement comprising a slit with overlapping edges and a strap with hook and loop fastening elements thereon (see figures 1, 3, and 4). It would have been obvious to provide an upper configuration as taught by Massengale in the footwear of Bible as modified above to make the shoe easier to put on and take off and to provide a secure attachment of the footwear.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 7-9 above, and further in view of either Maples (5024008) or Plotkin (4967491).

Bible as modified above shows a shoe substantially as claimed except for providing the footwear in combination with a bag. Either Maples or Plotkin teaches the well known and conventional practice of providing a bag in combination with overshoes (see column 3 line 58 or 50). It would have been obvious to provide a bag as is conventional and taught by Maples or Plotkin with the footwear of Bible as modified above to facilitate carrying the footwear when not in use.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bible as applied to claims 1, 3, 4, 6, 11, and 12 above, and further in view of either Maples (5024008) or Plotkin (4967491).

Bible as modified above shows a shoe substantially as claimed except for providing the footwear in combination with a bag. Either Maples or Plotkin teaches the well known and conventional practice of providing a bag in combination with overshoes (see column 3 line 58 or 50). It would have been obvious to provide a bag as is conventional and taught by Maples or Plotkin with the footwear of Bible as modified above to facilitate carrying the footwear when not in use.

8. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bible as applied to claims 1, 3, 4, 6, 11, and 12 above, and further in view of Massengale .

Bible as modified above shows a shoe substantially as claimed except for the exact upper configuration. Massengale teaches the well known closure arrangement comprising a slit with overlapping edges and a strap with hook and loop fastening elements thereon (see figures 1, 3, and 4). It would have been obvious to provide an upper configuration as taught by Massengale in the footwear of Bible as modified above to make the shoe easier to put on and take off and to provide a secure attachment of the footwear.

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 14-17 above, and further in view of either Maples (5024008) or Plotkin (4967491).

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Bible as modified above shows a shoe substantially as claimed except for providing the footwear in combination with a bag. Either Maples or Plotkin teaches the well known and conventional practice of providing a bag in combination with overshoes (see column 3 line 58 or 50). It would have been obvious to provide a bag as is conventional and taught by Maples or Plotkin with the footwear of Bible as modified above to facilitate carrying the footwear when not in use.

10. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Boyle (2585219).

Bible as modified above shows a shoe comprising a rubber elastic upper (14), and a rubber sole (22) with traction material (30) embedded therein substantially as claimed except for the exact traction material. Boyle teaches the use of crushed nuts as a traction material for embedding into rubber material for traction. It would have been obvious to use crushed nuts as taught by Boyle for the traction material in the shoe of Bible as modified above to increase traction on wet surfaces, and improve durability.

### ***Response to Arguments***

11. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

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In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (572)273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.



Marie Patterson  
Primary Examiner  
Art Unit 3728